November 26, 2012

Mr. Patrick Lawler
Office of Policy Analysis and Research
Federal Housing Finance Agency
400 7th Street, SW
Washington, D.C. 20024
gfeeinput@fhfa.gov

Dear Mr. Lawler:

Thank you for the opportunity to comment on the Federal Housing Finance Agency's plan for state-level guarantee fee pricing at Fannie Mae and Freddie Mac.

This comment is submitted on behalf of Coastal Enterprises, Inc., Maine Equal Justice Partners, Pine Tree Legal Assistance, and Maine Attorneys Saving Homes:

> Coastal Enterprises, Inc. (CEI) is a private, non-profit Maine-based community development corporation (CDC) and community development finance institution (CDFI). CEI provides financing and technical assistance for small businesses, nonprofits and affordable housing and has been a HUD-certified counseling agency since 1996. Its three full-time counselors provide statewide foreclosure mitigation counseling, help clients prepare for mediation and often accompany clients to mediation. CEI played a leadership role in helping to pass Maine's 2007 anti-predatory lending and 2009 foreclosure prevention laws.
>
> Pine Tree Legal Assistance is a state wide non-profit legal services provider that provides free legal assistance to low-income Maine residents. Pine Tree Legal Assistance is the only state wide legal services agency providing statewide foreclosure prevention legal services. It has assisted Maine homeowners in their efforts to avoid foreclosure since 2007.
>
> Maine Attorneys Saving Homes is a group of Maine attorneys who dedicate substantial portions of their legal practices to representing Maine homeowners in foreclosure cases. Often their services are provided on a pro bono basis.

We have read the comments provided to FHFA by Professor Alan White and by the Center for American Progress (CAP) and fully endorse and support their well-reasoned and persuasive comments as to why the FHFA should not proceed with its proposal.

While Maine is not one of the five states targeted by the FHFA proposal, we are nevertheless greatly concerned by it. The manner in which the proposal affects the five targeted states will surely have a spillover effect in Maine as well as other judicial foreclosure states. If the

five targeted states are forced to dilute their judicial foreclosure statutes, it is a certainty that similar efforts will be undertaken here in Maine. Dilution of these foreclosure statutes, in the face of the massive malfeasance of the financial industry in the origination of these loans, and the ongoing and pervasive abuses of the loan servicers prior to and during the foreclosure process, is not something that FHFA should encourage.

The targeting by FHFA of five large judicial foreclosure states is ill advised and unfortunate. It is the judicial foreclosure process, after all, that uncovered the so-called "robo-signing" scandal. In a Fannie Mae judicial foreclosure case, the Maine Supreme Court addressed the actions of Fannie Mae's servicer's practices as "reprehensible," "fraudulent," "ethically indefensible" and representative of an alarming lack of respect for the nation's judiciaries."[1] In that case the dissenting judge found that "there was good cause to believe that ... the management of GMAC **and Fannie** Mae, and their attorneys, knew or should have known of the wrongful [conduct]"[2] FHFA should be concerned about protecting the judicial process that has been the principal tool in exposing widespread servicer misconduct, rather than implementing a rule that will impair these judicial foreclosure proceedings. Had the Enterprises exercised responsible oversight of the servicers these problems might not have occurred.

Further, it is our experience in Maine that the judicial foreclosure process is proving to be an essential tool in foreclosure mediation. Judicial review is frequently necessary to correct servicing abuses that threaten what should be successful foreclosure prevention efforts. We see foreclosure mediations taking months to complete, because the servicers repeatedly come to the table unprepared and unable to resolve loans where the homeowners' documentation is complete and has been submitted multiple times. Our courts have to step into those cases frequently to force the servicers to act responsibly and in a timely fashion. Recently, a judge dismissed a foreclosure **with prejudice** on a Fannie Mae owned loan being foreclosed by Bank of America, where Bank of America was twice before sanctioned for mediation misconduct related to servicing of the loan.[3] FHFA should not be attempting to speed up these foreclosure mediation proceedings, where the Enterprises' servicers are the principal cause of delay. Instead, FHFA should be redoubling its demands upon the Enterprises to supervise their servicers' participation in the foreclosure mediation process and ensure accurate, timely, and appropriate review, analysis, and determination of homeowner eligibility for foreclosure prevention alternatives.

Moreover, it is evident to HUD certified housing counseling agencies and legal service practitioners that many of the delays in foreclosures are the result of loan servicer and servicer attorney failures. The CAP comment letter describes the New York situation where there is clear evidence that servicers and their lawyers are the causes of delays in foreclosures. Similarly,

---

[1] *Federal National Mortgage Association v. Bradbury*, 2011 ME 120, ¶ 7, 32 A.3d 1014

[2] *Id.* at ¶ 16

[3] *BAC Home Loans Servicing, LP v. Stewart,* RE-10-429 (Me. Super. Ct., Cum. Cty, April 17, 2012)

in Maine, tentative conclusions from an ongoing statistical analysis by Pine Tree Legal Assistance of a representative sample of foreclosures suggests that major factors in foreclosure delays in Maine are lack of diligence, and numerous outright errors, by both the servicers and their lawyers in prosecuting foreclosure cases. The ongoing statistical analysis is revealing patterns of delay specific to certain servicers and specific to certain law firms. Many of these servicers and law firms are involved in foreclosing loans owned by the Enterprises. We see numerous cases where the servicers take no action for months (and sometimes even years) on end. In many other cases we see delays resulting from failed summary judgment motions, where the failures are due solely to poorly prepared summary judgment motions and supporting affidavits. We are seeing numbers of trials where the foreclosure plaintiffs (even on Enterprise owned loans) are losing and verdicts are being entered in favor of homeowners because of sloppy documentation and poor records management.

In sum, we do not believe that FHFA should implement a rule that will inevitably chill state efforts to ensure that homeowners faced with financial hardship are given a fair and transparent opportunity to prevent foreclosure with judicial oversight when needed.

Answers to Specific Questions in the Notice

FHFA requested comments on three specific aspects of the proposal. Our answers are below.

Is standard deviation a reasonable basis for identifying those states that are significantly more costly than the national average?

Simply using specific state foreclosure timelines as a measure for identifying "more costly" foreclosure states is not appropriate. Implicit in the use of such a measure is the erroneous assumption that there is something wrong in the foreclosure process in the states with longer foreclosure timelines. In fact, it is more plausible to believe that those states with shorter foreclosure timelines are not adequately protecting homeowners against the abuses to which they were subjected in the loan origination and servicing process and to which they are now being subjected in the foreclosure process. Recently, at a continuing legal education seminar, held in Cumberland Maine, Maine judges observed that they no longer feel that they can trust servicer created summary judgment affidavits, and that the reason that they must take longer to resolve summary judgment motions is that they must review servicer filings with much more care and in much more detail. It is not proper for FHFA to implement such a standard deviation measure without first identifying the true causes for delays in foreclosures in specific states.

Should finer distinctions be made between states than the approach described here?

No, we do not believe FHFA should make any distinctions between states.

Should an upfront fee or an upfront credit be assessed on every state based on its relationship to the national average total carrying cost, such that the net revenue effect on the Enterprises is zero?

No. Charging different premiums in all fifty states based on some relationship to an average fundamentally subverts the essential purpose of a national secondary market. The cost of credit historically has been and should continue to be based on homeowner and property specific characteristics such as credit scores, property values, and other factors related to creditworthiness specific to the individual transaction. A fee related only to the national average carrying costs is a significant deviation. The undersigned reminds the FHFA that the current crisis was caused by sloppy, ineffective, and abusive origination and is perpetuated by in part by similar loan servicer failures. The crisis for Fannie and Freddie and hence FHFA is not the result of insufficient carrying costs.

Conclusion

It is our collective view that it would be inappropriate for FHFA to proceed with its proposed rule that would punish the larger judicial foreclosure states. Implicit, but unstated, in the proposed rule is a moral judgment that judicial foreclosures are unnecessary and dated and that the concept of homeownership relates to the purchase and sale of a commodity rather than the stable and lasting fabric of our families, towns, cities, and communities.

Quoting from the CAP comment letter "[w]e believe it would be a mistake for FHFA to impose state-level guarantee fees unrelated to the risks posed by individual loans, and we do not think the agency has demonstrated an adequate nexus between the problem it has identified and the solution it proposes. We therefore believe it would be appropriate for the agency to withdraw its proposal."

Thank you for the opportunity to comment on this notice. If you have any questions or would like to discuss anything in this letter in more detail, please contact any of us at the contact points shown below.

Coastal Enterprises, Inc.

By: Carla Dickstein

Carla Dickstein
Senior Vice President for Research and Policy Development

P.O. Box 268
Wiscasset, Maine 04578
(207) 882-5118

Pine Tree Legal Assistance

By: _____
for Chet Randall, Esq.
Director of Foreclosure Prevention Program

P.O. Box 547
Portland, Maine 04112
(207) 774-4753

Maine Attorneys Saving Homes (MASH)

By: _____
Thomas A. Cox, Esq.
MASH Volunteer Program Coordinator

88 Federal Street
Portland, Maine 04101
(207) 749-6671